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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,279

03/03/2004

Theodor Stern

26041

8931

20529

7590

03/02/2009

THE NATH LAW GROUP

112 South West Street

Alexandria, VA 22314

EXAMINER

VAKILI, ZOHREH

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

03/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/791,279	<b>Applicant(s)</b> STERN ET AL.	
	<b>Examiner</b> ZOHREH VAKILI	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Claims 1-21 are presented for examination.**

Applicant's Amendment filed September 12, 2008 has been received and entered into the present application. Claims 1-21 are pending and are herein examined on the merits.

Applicant's arguments, filed September 12, 2008 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

### ***Maintained Claim Rejections - 35 USC § 102***

The rejection of claims 1-3, 5-8, 11, and 17 under 35 U.S.C. 102(b) as being anticipated by WO 0059556 has been maintained for the reasons stated in the prior Office Action June 12, 2008 and further in view of the following remarks.

### ***Maintained Claim Rejections - 35 USC § 103***

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 0059556 (cited on IDS), in view of Kluger et al. (US PUB. No. 2002/0045873 A1) and further in view of Sinclair et al. (US Patent No. 5444113).

Newly added claims 18-21 are properly included in the present rejection because

Art Unit: 1614

the above mentioned references teach a formulation effective in reducing the pH in a menstruating vagina or in a tampon inserted therein to below pH 5.5.

***Response to Arguments under 35 USC § 102 & 103***

Applicant argues that Besemer does not teach a formulation, as recited, effective in reducing pH in a menstruating vagina or in a tampon inserted therein. Further, Applicant argues that as known by those skilled in the art, the use of superabsorbent materials in tampons is prohibited since they may promote toxic shock syndrome.

Examiner does not agree WO 0059556 very clearly teaches of sanitary products that contain lactide and as shown in WO 0059556 by incorporating lactide into the product the pH is lowered quickly. As Applicant indicates superabsorbent materials **may** (emphasis added) promote toxic shock syndrome. This is not a factual data and cannot be relied on. Sanitary products are available to be used inside or outside of the vagina. Further, Kluger et al. teach of a formulation effective in reducing the pH in a menstruating vagina or in a tampon inserted therein to below pH 5.5. Sinclair et al. teach polymers dioxanones such as lactide and glycolide. Although the term dioxanedione is sometimes used to refer specifically to glycolide. Glycolide and lactide can be used interchangeably in sanitary products and provide the same effect since both of them are used to reduce the pH. WO 0059556 anticipates the claimed invention. Accordingly, the above mentioned references, WO 0059556, Kluger et al., and Sinclair in combination render the claimed invention obvious. Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive.

Applicant's arguments were considered in its entirety but failed to be persuasive. For these reasons, and those already made of record in the previous Office Action dated June 12, 2008 of which such reasons are incorporated herein by reference, rejection of claims 1-21 remain proper and is **maintained**.

### ***Conclusion***

No claims of the present application are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1614

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner 1614

January 29, 2009

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614